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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/037,112  | 10/22/2001  | Phillips A. Koss     | 3771P2392           | 5939             |
| 23504   | 7590        | 09/30/2004           | EXAMINER            |                  |
| WEISS & MOY PC<br>4204 NORTH BROWN AVENUE<br>SCOTTSDALE, AZ 85251 |             |                      | BADII, BEHRANG      |                  |
|   |             |                      | ART. UNIT           | PAPER NUMBER     |
|   |             |                      | 3621                |                  |

DATE MAILED: 09/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |                   |  |
|------------------------------|-----------------|-------------------|--|
| <b>Office Action Summary</b> | Application No. | Applicant(s)      |  |
|                              | 10/037,112      | KOSS, PHILLIPS A. |  |
|                              | Examiner        | Art Unit          |  |
|                              | Behrang Badii   | 3621              |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 October 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. Claims 1-11 have been examined.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For independent claims 1, 4 and 8 the applicant claims a commission free auction, however applicant later on states there is a fee, which is charged to the auction participants. The other claims (2, 3, 5, 6, 7, 9, 10, 11) are dependent on claims 1,4, 8 and therefore are rejected by dependency for incorporating the same condition.

#### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claim 1 only recites abstract ideas. The recited steps of merely having an auction does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed by use of a pencil and paper. These steps only constitute an idea of an auction in general and not particularly in the technological arts.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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Claims 1 to 8, 10 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Woolston, U.S Patent Application Publication US2001/0007981 A1.

5. As per claim 1, Woolston discloses a method for having a commission free (fee based) auction comprising the steps of:

- assigning an item to be auctioned at a designated time (page 3, [0028]; page 9, [0067]);
- auctioning the item at the designated time wherein participants in the commission free (fee bases) auction have to pay a membership fee to participate (page 2, [0024]); and
- verifying of funds from a participant who places the highest bid (page 7, [0058]).

Also, as per the Merriam-Webster dictionary a commission is a **fee** paid to an agent or employee for transacting a piece of business or performing a service.

Therefore if an auction requires a fee, then it is not commission free.

6. As per claim 2, Woolston discloses charging a credit card of the participant who places the highest bid (page 3, [0027]).

7. As per claim 3, Woolston discloses sending the item to the participant who places the highest bid (page 8, [0063] and [0064]).

8. As per claim 4, Woolston discloses a method of participating in a commission free (fee based as discussed above) auction comprising the steps of:

- accessing an auction website (page 11, claim 5);

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- logging into the auction website wherein a user has to pay a membership fee to log into the auction website (page 3, [0024]);
- locating an item to place a bid (page 1, [0017]);
- placing a bid on the item (page 3 to 4, [0030]);
- stopping bidding on the item after a predetermined time frame (page 3 to 4, [0030]); and
- verifying funds participant who places a highest bid (page 7, [0058]).

9. As per claim 5, Woolston discloses charging a credit card of the participant who places the highest bid (page 3, [0027]).

10. As per claim 6, Woolston discloses sending the item to the participant who places the highest bid (page 8, [0063] and [0064]).

11. As per claim 7, Woolston discloses the steps of logging into the website further comprising the steps of-

- entering a user name and a user password (page 7, [0058]);
- verifying the user name and the user password (page 7, [0058]) ; and
- granting access if user name and user password are verified (page 7, [0058]).

12. As per claim 8, Woolston discloses a commission free (fee based as discussed above) auction system comprising, in combination:

- a plurality of computers for accessing an auction website (page 10 and 11, [0071]);
- an auction web server for hosting the auction website (page 8, [0063] and page 10, [0069]); and

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- a database coupled to the auction web server for allowing only users who have paid a membership fee to access the auction website (page 1 and 2, [0017]; page 2, [0018]; page 2, [0019]; page 2, [0021]; page 8, [0063] and page 10 [0069]).

13. As per claim 10, Woolston discloses a banking system coupled to the auction web server for verifying and charging funds of a user of the commission free (fee based as discussed above) auction system (page 3, [0027]; page 7, [0058] and page 10 and 11, [0071]).

As per claim 11, Woolston discloses a firewall (secure/security means) coupled to the auction web server for preventing unauthorized access to the auction web server (page 3, [0026]; page 7, [0058]; page 9, [0067]; page 10, [0070] and page 10 and 11, [0071]).

### ***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston, U.S Patent Application Publication US2001/0007981 A1 as applied to claim 8 above, and further in view of Woolston, U.S. Patent 6,202,051.

As per claim 9, Woolston (U.S Patent Application Publication US2001/0007981 A1) discloses a commission free (fee bases as discussed above), as described

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above. Woolston (U.S Patent Application Publication US2001/0007981 A1) does not disclose a mail server coupled to the auction web server for sending out emails to a user who has at least one of purchased or sold an item on the auction web site. Woolston (U.S. Patent 6,202,051) discloses a mail server coupled to the auction web server for sending out emails to a user who has at least one of purchased or sold an item on the auction web site (col. 26, claim 5, lines 23-33). It would have been obvious to modify Woolston (U.S Patent Application Publication US2001/0007981 A1) to include a mail server coupled to the auction web server for sending out emails to a user who has at least one of purchased or sold an item on the auction web site such as that taught by Woolston (U.S. Patent 6,202,051) in order to contact the client in a more time efficient and precise manner.

### ***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lee et al. (WO 01/33447 A1) discloses an auction fee processing method which involves determining auction fee corresponding to auction method and price at which product is sold, by server operator when sale of product is awarded.

Shkedy (U.S. Patent 6,260,024) discloses a method and apparatus for facilitating buyer-driven purchase orders on a commercial network system.

Graff (U.S. Patent 6,192,347) discloses a system and methods for computing to support decomposing property into separately valued components.



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Woolston (U.S. Patent 6,085,176) discloses a method and apparatus for using search agents to search plurality of markets for items.

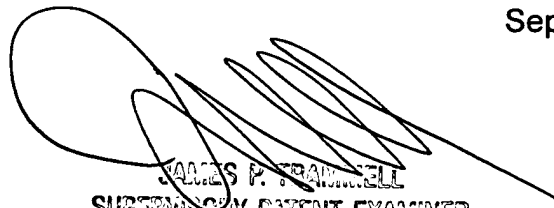
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Behrang Badii whose telephone number is 703-305-0530. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 703-305-9768. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Behrang Badii  
Patent Examiner  
Art Unit 3621  
September 8, 2004

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